IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1074 of 2000

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SHRADDHABEN BABULAL VITHLANI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.3.1,1.3.2
MS MINI NAIR AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
1st August, 2007.

ORAL JUDGMENT

The present petition, preferred under *Article* 226 of the Constitution of India, challenges the action of the respondent-State Government in

acquiring the excess vacant land under the Urban Land [Ceiling & Regulation] Act, 1976 [hereinafter referred to as, "***the Act***"].

On introduction of the Act, the petitioner, the holder of the land within the urban agglomeration of Rajkot City, made a declaration of his holding in Form-I as envisaged by Section 6 of the Act. After processing the said Form-I, the competent authority held that of his total holding of 2129.57 sq.m., the petitioner was entitled to retain 1500 sq.m of land and the land admeasuring 629.57 sq.m was held to be *surplus*. Accordingly, a draft statement was prepared and was served to the petitioner on 2nd March, 1979 under Section 8 [3] of the Act. Under the said draft statement, the petitioner was allowed to retain the lands of Survey No. 498, plot no.3; Survey No. 499, plot No. 52, and part of plot no.25 of Survey No. 488. The remainder of the said plot no.25 and the land Survey No. 488, plot no. 26 admeasuring 629.57 sq.m in aggregate was declared to be "*excess vacant land*". Under communication dated 8th March, 1979, the petitioner informed the competent authority that the draft statement was acceptable to him and was binding

to him. Pursuant to the said communication, final statement under Section 9 of the Act was drawn in terms of the said draft statement. Notification under Section 10 [1] of the Act was issued on 16th November, 1981, and was published in the official gazette on 26th November, 1981. By Notification dated 25th February, 1982 issued under Section 10 [3] of the Act and published in Official Gazette on 15th April, 1982, the said excess vacant land was vested in the State Government. Since vesting of the land, notice to hand over possession of the excess vacant land under Section 10 [5] of the Act was issued on 30th November, 1983. The possession of the excess vacant land was taken over on 29th October, 1986. In the meantime, the proceeding for determination of the premium had also taken place. By Order dated 22nd February, 1984 made by the competent authority, the premium of the excess vacant land was determined.

The petitioner has approached this Court sixteen years after the process was completed, as above. He has now claimed that the notice under Section 10 [1] of the Act was given in respect of the land Survey No. 488, plot no.25-*paiki* and not in

respect of plot no. 26. The Notification issued under Section 10 [3] of the Act also mentioned the plot no.25-*paiki* admeasuring 629.57 sq.m. which obviously was erroneous. He has submitted that the total area of the plot no.25 was 509 sq.m., out of which the petitioner was allowed to retain 388 sq.m. of land. The State Government, therefore, could not have acquired 629.57 sq.m. of land from the said plot no.25. As there is no vesting of plot no.26 at all, the action of the State Government in taking over possession of the part of the plot no.25 and plot no.26 is illegal, null and void. The possession having continued with the petitioner, in view of Sections 3 & 4 of the Urban Land [*Ceiling & Regulation*] Repeal Act, 1999, the proceeding in respect of the said excess vacant land shall stand abated. The petitioner is, therefore, entitled to retain whole of the plots nos. 25 & 26. The petitioner has also stated that he has constructed two houses on part of the land plot no. 25 which was, under the final statement, allowed to be retained by him. If the Government is permitted to acquire land of plot no.25, as indicated in its Notification, the

petitioner would suffer irreparable loss.

Ms. Nair has contested the petition. She has submitted that the petition suffers from the vice of delay, latches and acquiescence. She has admitted that due to clerical mistake, plot no. 26 was not referred to in the Notification issued under Sections 10 [1] & 10 [3] of the Act. *Nevertheless*, in notice to hand over possession issued under Section 10 [5] of the Act, the lands referred to were plot no. 25-*paiki* and plot no.26. Thus, the State Government as well as the petitioner were sure of the identity of the land and the area of the land which was held to be "*surplus*" and was acquired under the Act. She has also submitted that the petitioner had willingly handed over the possession of the excess vacant land as per the final statement.

I do agree that the State Government could not have taken over possession of the land under Section 10 [6] of the Act which was not vested in the State Government by appropriate notification issued under Section 10 [3] of the Act. If there were any mistake committed, the right course of action would be to issue corrigendum. That too the State Government has

not done till the date. But, in the instant case, the claim made by the petitioner deserves to be dismissed on the grounds of delay, latches and acquiescence. As recorded hereinabove, both the petitioner and the State Government were specific about the identity and the area of lands acquired i.e., the land plot no. 25-*paiki* and plot no.26. The petitioner did agree to the final statement drawn under Section 9 of the Act and he also handed over possession of the excess vacant land. He had also participated in determination of the premium for the excess vacant land. The petitioner, now eighteen years after the date of the Notification under Section 10 [3] of the Act; sixteen years after determination of the premium for the excess vacant land, and fourteen years after taking over possession of the excess vacant land by the State Government, cannot be permitted to challenge the said action. The petitioner has not even explained this inordinate delay and latches in this petition.

For the aforesaid reasons, the petition is dismissed. Rule is *discharged*. *Interim* relief stands vacated.

{Ms. R.M Doshit, J.}

*Prakash**